



1997 SENATE BILL 349

November 12, 1997 - Introduced by Senators PLACHE, BURKE and ROESSLER, cosponsored by Representatives CARPENTER, BOYLE, J. LEHMAN, HANSON, BLACK, MUSSER, GRONEMUS, R. YOUNG, BOCK, ROBSON and PLOUFF. Referred to Committee on Labor, Transportation and Financial Institutions.

1 **AN ACT to amend** 109.01 (2), 109.12 (1) (a), 109.12 (1) (b), 109.12 (2), 109.12 (3),
2 111.322 (2m) (a) and 111.322 (2m) (b); and **to create** 109.075 and 893.98 of the
3 statutes; **relating to:** notice to employes, retirees and dependents of cessation
4 of health care benefits, granting rule-making authority and providing a
5 penalty.

Analysis by the Legislative Reference Bureau

Under current law, any employer employing 50 or more persons in this state who decides upon a business closing or mass layoff must notify the department of workforce development (DWD), any employe who might be expected to lose his or her job as a result of the business closing or mass layoff (affected employe), any affected employe's collective bargaining representative and the highest official of the municipality in which the affected employment site is located of the business closing or mass layoff no later than 60 days before that action is to take place. Currently, if an employer fails to give timely notice to an affected employe, the affected employe may recover pay and the value of any benefits, including the cost of any medical treatment incurred, that the affected employe would have received for the period beginning on the day on which the employer was required to give notice and ending on the day on which the employer actually gave notice or the day on which the business closing or mass layoff occurred, whichever occurs first (recovery period). Current law also permits DWD to access a business closing surcharge of not more than \$500 per day for each day of the recovery period on an employer who fails to give

timely notice to the highest official of the affected municipality. In addition, current law provides various exceptions to the business closing or mass layoff notification law under which an employer is not liable for failure to provide notice if DWD determines that certain conditions apply, including any of the following:

1. That the employer was actively seeking capital or business to enable the employer to avoid or postpone indefinitely the business closing or mass layoff and that the employer reasonably and in good faith believed that providing the notice would have prevented the employer from obtaining the capital or business.

2. That the business closing or mass layoff is the result of any of the following:

- a. The sale of the employer's business, if the purchaser agrees to hire substantially all of the affected employees with not more than a 6-month break in employment.

- b. Unforeseen business circumstances.

- c. A natural or man-made disaster beyond the control of the employer.

- d. A temporary cessation in business operations, if the employer recalls the affected employees within 60 days.

This bill creates a similar notification requirement for employees who decide to cease providing health care benefits. Specifically, the bill requires any employer employing 50 or more persons in this state who decides to cease providing health care benefits to notify any employe, retired employe or surviving covered dependent of an employe or retired employe who loses, or who may reasonably be expected to lose, his or her health care benefits provided by the employer (affected employe, retiree or dependent) of the cessation of the health care benefits no later than 60 days before that action is to take place. Under the bill, if an employer fails to give timely notice to an affected employe, retiree or dependent, the affected employe, retiree or dependent may recover the value of any health care benefits, including the cost of any medical treatment incurred that would have been covered but for the cessation of health care benefits, that the employe, retiree or dependent would have received for the period beginning on the day on which the employer was required to give notice and ending on the day on which the employer actually gave notice or the day on which the cessation of health care benefits occurred, whichever occurs first. The bill also provides for certain exceptions to the requirement that an employer provide notification if the employer decides to cease providing health care benefits. Under the bill, an employer is not liable for failure to provide notice if DWD determines that any of the following conditions applies:

1. That the employer was actively seeking capital or business to enable the employer to avoid or postpone indefinitely the cessation of health care benefits and that the employer reasonably and in good faith believed that providing the notice would have prevented the employer from obtaining the capital or business.

2. That the cessation of health care benefits is the result of any of the following:

- a. The sale of the employer's business, if the purchaser agrees to provide health care benefits for all of the affected employees, retirees and dependents with not more than a 60-day break in coverage.

- b. Unforeseen business circumstances.

- c. A natural or man-made disaster beyond the control of the employer.

d. A temporary cessation in providing health care benefits, if the employer renews providing health care benefits within 60 days.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 109.01 (2) of the statutes is amended to read:

2 109.01 (2) Except as provided in s. ss. 109.07 (1) (d) and 109.075 (1) (c),
3 “employer” means any person engaged in any activity, enterprise or business
4 employing one or more persons within the state, including the state and its political
5 subdivisions and charitable, nonprofit or tax-exempt organizations and institutions.

6 **SECTION 2.** 109.075 of the statutes is created to read:

7 **109.075 Cessation of health care benefits affecting employes, retirees**
8 **and dependents; advance notice required. (1)** In this section:

9 (a) “Affected employe, retiree or dependent” means an employe, retired
10 employe or a surviving covered dependent of an employe or retired employe who
11 loses, or may reasonably be expected to lose, his or her health care benefits provided
12 by an employer who is required to give notice under sub. (2) because the employer
13 has decided to cease providing health care benefits.

14 (b) “Employe benefit plan” means a plan as defined in 29 USC 1002 (3).

15 (c) “Employer” means any business enterprise that employs 50 or more persons
16 in this state.

17 (d) “Health care benefits” means coverage of health care expenses under an
18 employe benefit plan.

19 **(2)** Subject to sub. (5) or (6), an employer who has decided to cease providing
20 health care benefits in this state shall promptly notify any affected employe, retiree

1 or dependent and any collective bargaining representative of any affected employe,
2 retiree or dependent in writing of such action no later than 60 days prior to the date
3 that the cessation of health care benefits takes place. This subsection does not apply
4 to a cessation of health care benefits that is caused by a strike or lockout.

5 (3) (a) If an employer fails to give timely notice to an affected employe, retiree
6 or dependent as required under sub. (2), the affected employe, retiree or dependent
7 may recover, as provided under sub. (4), the value of any health care benefits that the
8 affected employe, retiree or dependent would have received during the recovery
9 period described under par. (c), but did not receive because of the cessation of health
10 care benefits, including the cost of any medical treatment incurred that would have
11 been covered but for the cessation of health care benefits.

12 (b) The amount that an affected employe may recover under par. (a) shall be
13 reduced by any cost that the affected employer incurs by crediting the affected
14 employe, under an employe benefit plan, for time not actually served because of a
15 business closing, as defined in s. 109.07 (1) (b), or mass layoff, as defined in s. 109.07
16 (1) (f).

17 (c) The recovery period under par. (a) begins on the day that the cessation of
18 health care benefits occurs. The recovery period equals the number of days in the
19 period beginning on the day on which an employer is required to give notice under
20 sub. (2) and ending on whichever of the following occurs first:

21 1. The day that the employer actually gave the notice to the affected employe,
22 retiree or dependent.

23 2. The day that the cessation of health care benefits occurred.

24 (4) (a) An affected employe, retiree or dependent whose employer or former
25 employer, or whose spouse's or parent's employer or former employer, fails to notify

1 timely the affected employe, retiree or dependent under sub. (2) may file a claim with
2 the department. If the affected employe, retiree or dependent files a claim with the
3 department no later than 300 days after the cessation of health care benefits
4 occurred, the department shall, in the manner provided in s. 109.09, investigate the
5 claim, determine the number of days that the employer or former employer was late
6 in providing notice and, on behalf of the affected employe, retiree or dependent,
7 attempt to recover from the employer or former employer the payment under sub. (3).

8 (b) If the department does not recover payment within 180 days after a claim
9 is filed or within 30 days after it notifies the affected employe, retiree or dependent
10 of its determination under par. (a), whichever is first, the department shall refer the
11 claim to the department of justice. The department of justice may bring an action
12 in circuit court on behalf of the affected employe, retiree or dependent to recover the
13 payment under sub. (3).

14 (c) If the department of justice does not bring an action under par. (b) within
15 120 days after the claim is referred to it, the affected employe, retiree or dependent
16 may bring an action in circuit court to recover the payment under sub. (3). If the
17 affected employe, retiree or dependent prevails in the action, he or she shall also
18 recover costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney
19 fees.

20 (d) An action under this section shall be begun within one year after the
21 department refers the claim to the department of justice under par. (b), or be barred.

22 **(5)** (a) An employer is not liable under this section for a failure to give notice
23 to any person under sub. (2), if the department determines all of the following:

1 1. When the notice under sub. (2) would have been timely given, that the
2 employer was actively seeking capital or business to enable the employer to avoid or
3 postpone indefinitely the cessation of health care benefits.

4 2. That the employer reasonably and in good faith believed that giving the
5 notice required under sub. (2) would have prevented the employer from obtaining the
6 capital or business.

7 (b) The department may not determine that an employer was actively seeking
8 capital or business under par. (a) 1. unless the employer has a written record, made
9 while the employer was seeking capital or business, of those activities. The record
10 shall consist of the documents and other material specified by the department by rule
11 under s. 109.12 (1) (b). The employer shall have individual documents in the record
12 notarized, as required by the department's rules. The employer shall provide the
13 department with an affidavit verifying the content of the notarized documents.

14 **(6)** An employer is not liable under this section for a failure to give notice to any
15 person under sub. (2), if the department determines that the cessation of health care
16 benefits is the result of any of the following:

17 (a) The sale of part or all of the employer's business, if the purchaser agrees in
18 writing, as part of the purchase agreement, to provide health care benefits for all of
19 the affected employees, retirees and dependents with not more than a 60-day break
20 in coverage.

21 (b) Business circumstances that were not foreseeable when the notice would
22 have been timely given.

23 (c) A natural or man-made disaster beyond the control of the employer.

1 (d) A temporary cessation in providing health care benefits, if the employer
2 renews providing health care benefits for the affected employes, retirees and
3 dependents on or before the 60th day beginning after the cessation.

4 (7) Each employer shall post, in one or more conspicuous places where notices
5 to employes are customarily posted, a notice in a form approved by the department
6 setting forth the rights of employes, retirees and dependents under this section. Any
7 employer who violates this subsection shall forfeit not more than \$100.

8 (8) Section 111.322 (2m) applies to discharge and other discriminatory acts
9 arising in connection with any proceeding under this section.

10 **SECTION 3.** 109.12 (1) (a) of the statutes is amended to read:

11 109.12 (1) (a) Aid the administration of this chapter, including the enforcement
12 of s. ss. 109.07 and 109.075 and criteria for exceptions under s. ss. 109.07 (5) and (6)
13 and 109.075 (5) and (6).

14 **SECTION 4.** 109.12 (1) (b) of the statutes is amended to read:

15 109.12 (1) (b) Establish the form and content of the record required under s.
16 109.07 (5) (b) and the record required under s. 109.075 (5) (b) and specify the
17 documents that must contain notarized signatures.

18 **SECTION 5.** 109.12 (2) of the statutes is amended to read:

19 109.12 (2) Not later than March 1 annually, ~~beginning with 1990~~, submit a
20 written report on its activities in the preceding calendar year related to the
21 enforcement and administration of s. ss. 109.07 and 109.075 to the chief clerk of each
22 house of the legislature for distribution under s. 13.172 (3) to the standing
23 committees with jurisdiction over labor.

24 **SECTION 6.** 109.12 (3) of the statutes is amended to read:

